

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 08-CR-53

SERGIO HERNANDEZ,

Defendant.

DECISION AND ORDER

Before the Court is Defendant Sergio Hernandez's (Hernandez) motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c), which allows a court to reduce a sentence if (1) the U.S. Sentencing Commission (Commission) has lowered the applicable guideline range, and (2) the reduction is consistent with applicable policy statements issued by the Commission.

In Hernandez's case the first criterion has been met. However, Hernandez was sentenced to the mandatory minimum of 120 months imprisonment, and the Commission's policy statement at USSG § 1B1.10 app. note 1(A) prohibits reduction of a sentence if an amendment "does not have the effect of lowering the defendant's applicable guideline range because of operation of another . . . statutory provision (*e.g.*, a statutory mandatory minimum term of imprisonment.)" As a matter of law,

Hernandez's sentence cannot fall below the statutory minimum, and no further reduction is allowed. Hernandez fails to meet the second criterion. Accordingly, his motion must be denied.

IT IS HEREBY ORDERED THAT:

Hernandez's motion to reduce sentence (ECF No. 1653) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 20th day of October, 2015.

BY THE COURT:



HON. RUDOLPH T. RANDA
U.S. District Judge